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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1973

No. 72-1589

VIOLA N. RICHARDSON, as County Clerk and Registrar of Voters for the County of Mendocino, individually and as a representative of the class of all other County Clerks and Registrars of Voters
Petitioner,

vs.

ABRAN RAMIREZ, LARRY GILL and ALBERT LEE, on behalf of themselves and all others similarly situated, LOS PINTOS, 7TH STEP FOUNDATION, INC. (CALIFORNIA AFFILIATES), PRISONERS' UNION, and THE LEAGUE OF WOMEN VOTERS OF CALIFORNIA, *Respondents.*

On Writ of Certiorari to the Supreme Court of the State of California

BRIEF FOR THE PETITIONER

OPINION BELOW

The opinion of the Supreme Court of California, reported at *Ramirez v. Brown*, 9 C.3d 199, 507 P.2d

1345, 107 Cal.Rptr. 137 (1973), appears in the appendix to the petition for certiorari.

JURISDICTION

The judgment of the Supreme Court of California was entered in bank on March 30, 1973, and the petition for certiorari was filed on May 26, 1973, and was granted on October 9, 1973. This Court's jurisdiction is invoked under 28 U.S.C., Section 1257(3).

QUESTIONS PRESENTED

Whether Article II, Section 3, of the California Constitution, which provides that no person "convicted of an infamous crime" shall exercise the privileges of an elector in California, and Article XX, Section 11, of the California Constitution, which denies the right of suffrage to "persons convicted of bribery, perjury, forgery, malfeasance in office, or other high crimes," and Sections 310, 321, 383, 389, 390, 14240, and 14246 of the California Elections Code, which implement the above constitutional disqualifications, violate the Equal Protection Clause of the Fourteenth Amendment.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Fourteenth Amendment, Section 2:

> "Representatives shall be apportioned among the several States according to their respective num-

bers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State."

California Constitution, Article II, Section 3:

"The Legislature shall prohibit improper practices that affect elections and shall provide that no severely mentally deficient person, insane person, *person convicted of an infamous crime,* nor person convicted of embezzlement or misappropriation of public money, shall exercise the privileges of an elector in this state." (Emphasis supplied.)

California Constitution, Article XX, Section 11:

"Laws shall be made to exclude from office, serving on juries, and from the right of suffrage, persons convicted of bribery, perjury, forgery, malfeasance in office, or *other high crimes.* The privilege of free suffrage shall be supported by laws regulating elections and prohibiting, under adequate penalties, all undue influence thereon

from power, bribery, tumult, or other improper practice." (Emphasis supplied.)

California Elections Code:

Sections 310, 321, 350, 383, 389, 390, 14240, and 14246. (Set forth in Appendix A hereto.)

California Government Code:

Section 275. (Set forth in Appendix A hereto.)

California Penal Code:

Sections 1203.4(a), 4852.01, 4852.02, 4852.03, 4852.05, 4852.06, 4852.07, 4852.08, 4852.13, 4852.16, and 4852.17. (Set forth in Appendix A hereto.)

STATEMENT OF THE CASE

The repondents, three ex-felons, sought a writ of mandate to compel election officials to register them as voters.[1] The original jurisdiction of the California Supreme Court was properly invoked per *Jolicoeur v. Mihaly*, 5 C.3d 565, 570, footnotes 1 and 2, 488 P.2d 1, 3, 96 Cal.Rptr. 697, 699 (1971). Respondent Ramirez had been convicted in Texas of the felony "robbery by assault" in 1952 and served time in jail for that offense. In 1972 he applied to register to vote in San Luis Obispo County, California, but was refused registration by the San Luis Obispo County Clerk. Respondent Lee had been convicted of the felony of "possession of heroin" in 1955 and served

[1]Petitioner was joined as a Respondent below upon application. *Ramirez v. Brown*, supra, 9 C.3d 199, 202, and N.1, 507 P.2d 1345, 107 Cal.Rptr. 137 (1973).

time in prison for that offense. In 1972 he applied to register to vote in Monterey County, California, but was refused registration by the Monterey County Clerk. Respondent Gill had been convicted of the felony of "second degree burglary" in 1962 and 1967 and of the felony of "forgery" in 1957 and had served time in prison for those offenses. In 1972 he applied to register to vote in Stanislaus County, California, but was refused registration by the Stanislaus County Clerk. *(Ramirez v. Brown, supra,* 9 C.3d 199, 202, 507 P.2d 1345, 107 Cal.Rptr. 137 (1973).)

The California Supreme Court, relying primarily on *Dunn v. Blumstein,* 405 U.S. 330 (1972), held that

> "disfranchisement by reason of conviction of crime is no longer constitutionally permissible" and,
>
> "as applied to all ex-felons whose terms of incarceration and parole have expired, the provisions of Article II and Article XX, Section 11, of the California Constitution denying the right of suffrage to persons convicted of crime, together with the several sections of the Elections Code implementing that disqualification, violate the Equal Protection Clause of the Fourteenth Amendment." *(Ramirez v. Brown, supra,* 9 C.3d 199, 202, 216-217, 507 P.2d 1345, 107 Cal.Rptr. 137 (1973), citation omitted, footnote omitted.)

SUMMARY OF ARGUMENT

The several states may constitutionally provide for the disenfranchisement of convicted felons. Such disenfranchisement procedure, notwithstanding any ne-

cessity to promote a "compelling state interest," is excepted from the purview of the Equal Protection Clause of the Fourteenth Amendment, Section 1, by Section 2 of that Amendment which allows the states to disenfranchise. The Equal Protection Clause of Section 1 of the Fourteenth Amendment cannot prohibit what is allowed by Section 2.

ARGUMENT

I. DISENFRANCHISEMENT OF PERSONS CONVICTED OF CRIME DOES NOT CONSTITUTE A DENIAL OF EQUAL PROTECTION OF THE LAWS.

The disenfranchisement of ex-felons has been universally approved in the federal courts. The argument that such disenfranchisement constitutes a denial of equal protection has been universally rejected. This Court itself has consistently held and approved lower Federal Court decisions holding that states may constitutionally disenfranchise convicted felons who might otherwise be qualified to vote.

In *Beacham v. Braterman,* 300 F.Supp. 182 (S.D. Fla. 1969), aff'd 396 U.S. 12 (1969), it was noted specifically that:

> "The initial question before the court is whether a state may constitutionally exclude from the franchise persons otherwise qualified to vote who have been convicted of a felony. We hold that the state may do so and that the Florida constitutional and statutory provisions which effect that exclusion are valid." *(Id.* at 183.)

The same conclusion was reached in *Fincher v. Scott,* 352 F.Supp. 117 (M.D. N.C. 1972), aff'd 411 U.S. 961 (1973), where the Court noted that:

> " * * * a state may constitutionally continue the 'historic exclusion' of felons from the franchise without regard to whether such exclusion can pass muster under the Equal Protection Clause." *(Id.,* at 119.)

Examination and analysis will show the rationale behind the above noted cases is sound beyond the slightest doubt.

A. A State May Constitutionally Disenfranchise Ex-felons.

Beacham v. Braterman, supra, 300 F.Supp. 182 (S.D. Fla. 1969), involved an action brought to challenge Florida constitutional and statutory provisions pertaining to the disenfranchisement of convicted felons and the discretionary exercise of pardon power by the executive branch of the state government.[2]

A convicted felon had attempted to register to vote but was refused that right solely on the basis of his conviction and nonrestoration of civil rights. His application for a pardon and restoration of civil rights had been denied.

The challenged Florida constitutional and statutory provisions read as follows:

> "Article VI, Section 4, Florida Constitution, 1969: 'Disqualifications.—No person convicted of a felony, or adjudicated in this or any other state

[2]See California Penal Code, Sections 4852.01, 4852.02, 4852.03, 4852.05, 4852.06, 4852.07, 4852.08, 4852.13, 4852.16, 4852.17 discussed *infra* re California Procedures, set forth in Appendix A hereto.

to be mentally incompetent, shall be qualified to vote or hold office until restoration of civil rights or removal of disability.'

"Florida Statute 97.041(5) (d), F.S.A.

'Qualifications to register

The following persons are not entitled to vote:

4. Persons convicted of any felony by any court of record and whose civil rights have not been restored.'" *(Id.,* at 183.)

The *Beacham* court, giving credence to the decisions in *Green v. Board of Elections of the City of New York,* 380 F.2d 445 (2d Cir. 1967), cert. den. 389 U.S. 1048 (1968), reasoned that disenfranchisement was constitutionally permissible because the United States Supreme Court had "frequently recognized" the propriety of excluding felons from the franchise.

" * * * '[e]ven though the precise issue has not arisen before the Supreme Court, the propriety of excluding felons from the franchise has been so frequently recognized—indeed put forward by the Justices to illustrate what the states *may* properly do—that such expressions cannot be dismissed as unconsidered dicta.' (Emphasis theirs.) See such expressions in *Davis v. Beason,* 133 U.S. 333, 346-347, 10 S.Ct. 299, 33 L.Ed. 637 (1890); *Estep v. United States,* 327 U.S. 114, 122, 66 S.Ct. 423, 90 L.Ed. 567 n. 13, (1946); *Tropp v. Dulles,* 356 U.S. 86, 96-97, 78 S.Ct. 590, 2 L.Ed.2d 630 (1958) (Warren, C.J.); *Lassiter v. Northampton County Board of Elections,* 360 U.S. 45, 51, 79 S.Ct. 985, 3 L.Ed.2d 1072 (1959) (Douglas, J.); *Gray v. Sanders,* 372 U.S. 368, 380, 83 S.Ct.

801, 9 L.Ed.2d 821 (1963) (Douglas, J.); and *Harper v. Virginia State Board of Elections,* 383 U.S. 663, 673, 675 n. 4, 86 S.Ct. 1079, 16 L.Ed.2d 169 (1966) (dissenting opinion of Black, J.)." *(Beacham v. Braterman, supra,* 300 F.Supp. at 184.)

What is the propriety of excluding felons from franchise? This is precisely the issue reached by *Green v. Board of Elections, supra,* 380 F.2d 445. It was noted there that:

> "* * * it can scarcely be deemed unreasonable for a state to decide that perpetrators of serious crimes shall not take part in electing the legislators who make the laws, the executives who enforce these, the prosecutors who must try them for further violations, or the judges who are to consider their cases. This is especially so when account is taken of the heavy incidence of recidivism and the prevalance of organized crime. See The Challenge of Crime in a Free Society, A Report by the President's Commission on Law Enforcement and Administration of Justice, 45-47, 187-196 (1967). A contention that the equal protection clause requires [a state] to allow convicted mafiosi to vote for district attorneys or judges would not only be without merit but as obviously so as anything can be." (*Id., at* 451-452.)

The California constitutional and statutory provisions now in question prevent exactly what the *Green* Court envisioned in that the California Government Code provides:

> "Unless otherwise specifically provided, every elector is eligible to the office for which he is an elector, and no person is eligible who is not such an elector." (California Government Code, Section 275.)

Thus, without the aforementioned and now questioned constitutional and statutory safeguards, California would be in precisely the position of allowing ex-felons to vote for and conceivably be elected, if otherwise qualified, to the office of legislator, sheriff, district attorney, or judge. This situation would be intolerable. (See also, *Kronlund v. Honstein,* 327 F.Supp. 71 (N.D. Ga. 1971).)

Although *Stephens v. Yeomans,* 327 F.Supp. 1182 (D. N.J. 1970), did disapprove disenfranchisement based upon a criminal conviction, the court there based its conclusion upon the inconsistent development of New Jersey voter classification. (*Id.,* at 1188; see *Kronlund v. Honstein, supra,* 327 F.Supp. 71, 73-74.) In contrast, California disenfranchisement provisions are legislatively and judicially consistent. The California Constitution of 1849 provided in Article II, Section 5, that:

> " * * * no idiot, insane person, or person convicted of any infamous crime, and no person hereafter convicted of the embezzlement or misappropriation of public money, shall ever exercise the privileges of an elector in this State."

The California Constitution of 1879, in Article II, Section 1, adopted the terms:

> " * * * no idiot, no insane person, no person convicted of any infamous crime, no person hereafter convicted of the embezzlement or misappropriation of public money, * * * shall ever exercise the privileges of an elector in this State; * * *."

By referendum on November 7, 1972 (Proposition 7), the voters of the State of California reenacted Article II, Section 1, of the Constitution of the State of California as Article II, Section 3, as a mandate to the legislature of this state, requiring the legislature to provide that:

> " * * * no * * * person convicted of an infamous crime, nor person convicted of embezzlement or misappropriation of public money, shall exercise the privileges of an elector in this state."

The California Supreme Court originally defined the word "infamous" as including all felonies in *Ex Parte Westenburg,* 167 C.309, 139 P. 674 (1914), stating:

> "Crimes are infamous either by reason of their punishment or by reason of their nature. In the first class fall all felonies, as the punishment therefor is imprisonment in the state prison." (*Id.,* at 319, 139 P at 679.)

In 1966, *Otsuka v. Hite,* 64 C.2d 596, 414 P.2d 412, 51 Cal.Rptr. 284, the Supreme Court of California redefined "infamous" and explained that a crime may be deemed infamous only by an inquiry focused precisely on the "nature of the crime" itself rather than solely upon the "nature of the punishment."

California disenfranchisement provisions prior to the decision in *Otsuka* thus appeared substantially similar to those of Florida upheld in *Beacham v. Braterman, supra,* 300 F.Supp. 182 (S.D. Fla. 1969).

Otsuka did not hold that the California disenfranchisement provisions were no longer applicable to convicted felons. Rather, *Otsuka* acknowledged the second portion of the *Westenburg* definition—"by reason of their nature." Thus, *Otsuka* in no way suggested that the disenfranchisement of felons was not constitutionally permitted. Following the *Otsuka* decision, disenfranchisement in California is to be based upon the "nature of the crime" itself and not simply upon the "nature of the punishment."

B. Section 2 of the Fourteenth Amendment Authorizes Disenfranchisement of Convicted Felons.

Fincher v. Scott, supra, 352 F.Supp. 117 (M.D. N.C. 1972), recently affirmed by this Court, appears to be on all fours with the position of Petitioner Richardson and virtually in direct conflict with the decision of the California Supreme Court below.

In *Fincher,* a convicted felon had attempted to register to vote, but registration was refused because he was a convicted felon whose right of citizenship had not been restored. (See California Penal Code, Sections 1203.4(a), 4852.01, 4852.02, 4852.03, 4852.05, 4852.06, 4852.07, 4852.08, 4852.13, 4852.16, 4852.17, set forth in Appendix A hereto.) Relief from the disenfranchisement was sought before a three-judge district Court through a declaratory and injunctive action

against the applicable statutory and constitutional provisions of North Carolina that deprived convicted felons of the right to vote.[3]

In dismissing the action and denying the relief sought, Circuit Judge J. Braxton Craven, speaking for the unanimous Court, most effectively argues the position of Petitioner herein. He states:

> "[The North Carolina] provisions are attacked as being a denial of equal protection in violation of U. S. Const. amend. XIV, §1, * * *.
>
> * * *
>
> "A contention that provisions of state law like those before us violate the equal protection clause also was made in *Green v. Board of Elections,* 380 F.2d 445 (2d Cir. 1967).
>
> 'Plaintiff places heaviest weight on the equal protection clause of the Fourteenth Amendment, relied upon in such landmark decisions as the apportionment cases, *Baker v. Carr,* 369

[3]As noted by the Court in *Fincher v. Scott,* 352 F.Supp. 117, 118:

> "The Constitution of North Carolina, art. VI, §2(3) provides:
> "'Disqualification of felon: No person adjudged guilty of a felony against this State or the United States, or adjudged guilty of a felony in another state that also would be a felony if it had been committed in this State, shall be permitted to vote unless that person shall be first restored to rights of citizenship in the manner prescribed by law.'
> "N.C. Gen. Stat. §163-55(3) provides.
> "'The following classes of persons shall not be allowed to register or vote in this State:
> "'(3) Persons who have been convicted, or who have confessed their guilt in open court, upon indictment, of any crime the punishment for which now or may hereafter be imprisonment in the State's prison, unless he shall have had his rights of citizenship restored in the manner prescribed by law.'"

U.S. 186 [82 S.Ct. 691, 7 L.Ed.2d 663] (1962); *Gray v. Sanders,* 372 U.S. 368 [83 S.Ct. 801, 9 L.Ed.2d 821] (1963), and *Reynolds v. Sims,* 377 U.S. 533 [84 S.Ct. 1362, 12 L.Ed.2d 506] (1964); and the voter qualification cases, *Carrington v. Rash,* 380 U.S. 89 [85 S.Ct. 775, 13 L.Ed.2d 675] (1965) and *Harper v. Virginia Board of Elections,* 383 U.S. 663 [86 S.Ct. 1079, 16 L.Ed.2d 169] (1966). But none of those decisions intimates that the states are without power to continue their historic exclusion from the franchise of persons convicted of all or certain types of felonies. Even though the precise issue has not arisen before the Supreme Court, the propriety of excluding felons from the franchise has been so frequently recognized —indeed put forward by the Justices to illustrate what the states may properly do—that such expressions cannot be dismissed as unconsidered dicta.' 380 F.2d at 451.

"We think that a state may constitutionally continue the 'historic exclusion' of felons from the franchise without regard to whether such exclusion can pass muster under the Equal Protection Clause. * * *"

* * *

"* * * Putting it positively, we think §1 must be read in light of §2, and, so read, denial of the franchise to felons is specifically excepted from the Equal Protection Clause contained in §1.

"While it may be more desirable from a correctional point of view to give felons the right to vote, Comment, 50 N.C.L.Rev. 903, 909-10 (1972), we are convinced the states are not constitutionally required to do so." (*Id.,* at 118-119.)

It has been consistently acknowledged by the United States Supreme Court that the states may disenfranchise for crime.

In *Davis v. Beason,* 133 U.S. 333 (1890), it is stated:

> "In our judgment [a statute] * * * which provides that 'no person * * * convicted of treason, felony or bribery in this territory * * * is permitted to vote at any election * * *' is not open to any constitutional or legal objection." (*Id.,* at 133 U.S. 333, ... 33 L.Ed. 637, 641.)

In *Trop v. Dulles,* 356 U.S. 86 (1958), this Court stated that:

> "A person who commits a bank robbery, for instance, loses his right to liberty and often his right to vote. If in the exercise of the power to protect banks, both sanctions were imposed for the purpose of punishing bank robbers, the statutes authorizing both disabilities would be penal. But because the purpose of the latter statute is to designate a reasonable ground of eligibility for voting, this law is sustained as a nonpenal exercise of the power to regulate the franchise." (*Id.,* at 96-97. Footnotes omitted.)

And in *Lassiter v. Northampton County Board of Elections,* 360 U.S. 45 (1959), it was stated that:

> "Residence requirements, age, previous criminal record [citation] are obvious examples indicating factors which a state may take into consideration in determining the qualifications of voters." (*Id.,* at 51.)

Section 2 of the Fourteenth Amendment provides:

> "Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion *or other crime*, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State." (Emphasis supplied.)

Section 2 of the Fourteenth Amendment is also reflected in the United States Code.

> "Should any State deny or abridge the right of any of the male inhabitants thereof, being twenty-one years of age, and citizens of the United States, to vote at any election named in the amendment to the Constitution, Article 14, Section 2, except for participation in the rebellion *or other crime*, the number of Representatives apportioned to such State shall be reduced in the proportion in which the number of such male citizens shall have to the whole number of male citizens twenty-one years of age in such State." (17 Stat. 29, 2 U.S.C. Section 6. Emphasis supplied.)

Petitioner submits that Section 2 of the Fourteenth Amendment expressly allows a state to disenfranchise. Petitioner's position is supported by the federal Courts and sound reason.

In 1873, in *United States v. Anthony,* 24 Fed. Case No. 14,459, p. 829 (C.C. N.D. N.Y. 1873), the Court spoke of disenfranchisement for crime as allowed by Section 2 and said:

> "This view is assumed in the second section of the Fourteenth Amendment, which enacts, that if the right to vote for federal officers is denied by any state to any of the male inhabitants of such state, except for crime, the basis of representation of such state shall be reduced in a proportion specified. Not only does this section assume that the right of male inhabitants to vote was the especial object of its protection, but it assumes and admits the right of a state, notwithstanding the existence of that clause under which the defendant claims to the contrary, to deny to classes or portions of the male inhabitants the right to vote which is allowed to other male inhabitants." (*Id.,* at 831.)

The importance of Section 2 of the Fourteenth Amendment is noted in *Green v. Board of Elections of the City of New York, supra,* 380 F.2d 445 (2d Cir. 1967). There, the Court determined that:

> "The framers of the [Fourteenth] Amendment * * * could hardly have intended the general language of §1 to outlaw discrimination which §2 expressly allowed without the penalty of reduced representation. * * * We see nothing in the language or in history to support [the] sug-

gestion that 'other crimes' meant only a crime connected with the rebellion. The court's rejection of Mr. Justice Harlan's position that §2 is the only portion of the Fourteenth Amendment dealing with voting rights, see *Reynolds v. Sims*, supra, 377 U.S. at 589, 84 S.Ct. 1362, 12 L.Ed.2d 506, in no way indicates it would deny that §1 of the Amendment cannot be fairly read to prohibit a discrimination which §2 expressly permits —especially in the light of the Justices' frequent and consistent statements approving voting disqualification for felony." (*Id.*, at 452. Footnote omitted.)

And in *Kronlund v. Honstein, supra,* 327 F.Supp. 71 (N.D. Ga. 1971), the Court found that:

"In determining that there has been a violation of * * * Fourteenth Amendment rights, the exclusionary language of Section 2 of the Fourteenth Amendment must be considered. This court concurs in the opinion expressed on this matter by Judge Friendly in *Green v. Board of Elections of New York,* 380 F.2d 445 (2d Cir. 1967). In that case, it was suggested that the Section 2 language may be dispositive of the question of whether the states can pass disenfranchisement laws. This is so because although Section 2 provides a penalty for denying qualified persons the right to vote, at the same time, it specifically excepts from its coverage, state action limiting the right to vote 'for participation in rebellion or other crime.' " (*Id.*, at 74.)

The California Supreme Court below, in holding that disenfranchisement of convicted felons was indeed a violation of the Equal Protection Clause, er-

roneously based its decision upon *Dunn v. Blumstein,* 405 U.S. 330 (1972).

Dunn notes that:

> "To decide whether a law violates the Equal Protection Clause, we look, in essence, to three things: the character of the classification in question; the individual interests affected by the classification; and the governmental interests asserted in support of the classification." (*Id.,* at 335.)

This Court, citing its decision in *Kramer v. Union Free School District,* 395 U.S. 621 (1969), then went on to state in *Dunn* that:

> "* * * if a challenged statute grants the right to vote to some citizens and denies the franchise to others, 'the Court must determine whether the exclusions are *necessary* to promote a *compelling* state interest.' [Citations.]" (*Dunn v. Blumstein, supra,* 405 U.S. at 337, original emphasis; see also, *Bullock v. Carter,* 405 U.S. 134 (1972), *Kramer v. Union Free School District, supra,* 395 U.S. 621 (1969).

It is clear that *Dunn* dealt with a challenge to state durational residence laws as a ban to the registration of voters. It is submitted that *Dunn* and other equal protection cases dealing with apportionment (see *Baker v. Carr,* 369 U.S. 186 (1962), apportionment statute affecting a debasement of votes; *Gray v. Sanders,* 372 U.S. 368 (1963), unit system as vote counting basis in statewide primary election; *Reynolds v. Sims,* 377 U.S. 533 (1964), apportionment of both houses of bicameral state legislature on population

basis) and voter qualifications (see *Carrington v. Rash,* 380 U.S. 89 (1965), denial of franchise to United States Army serviceman; *Harper v. Virginia Board of Elections,* 383 U.S. 663 (1966), payment of poll tax) have no applicability to the case at bench.

Although Petitioner believes California indeed has a "compelling state interest" for disenfranchising former felons (see California Government Code, Section 275, discussed *supra; Green v. Board of Elections, supra,* 380 F.2d 445; *Kronlund v. Honstein, supra,* 327 F.Supp. 71), even in the absence of such an "interest," disenfranchisement is *specifically excepted from the Equal Protection Clause by Section 2 of the Fourteenth Amendment.*

The correctness of the decision below is thus open to serious question. The California Supreme Court has held unconstitutional, on the basis of the Equal Protection Clause of the Fourteenth Amendment, Section 1, various California constitutional and statutory provisions relating to disenfranchisement for crime without due regard for the declaration of Section 2 of that Amendment which excepts such disenfranchisement from the purview of the Equal Protection Clause.

Any examination of voting rights and denial thereof based upon the Equal Protection Clause of Section 1 of the Fourteenth Amendment must take into account the express exceptions of Section 2 of that Amendment. Section 1 cannot prohibit what is allowed by Section 2. The latter section speaks of male inhabitants, twenty-one years old, citizens, who have not

participated in rebellion "or other crime." It is submitted that, as women's suffrage and the eighteen-year-old vote were provided for by constitutional amendment, only such constitutional amendment can enfranchise aliens, rebels, and felons. (See U. S. Const. Amend. XIX, XXVI.)

II. THE STATUTORY SCHEME FOR RE-ENFRANCHISEMENT IN CALIFORNIA INSURES EQUAL PROTECTION AND DUE PROCESS OF THE LAW.

The California Supreme Court below found unconstitutional Sections 310, 321, 383, 389, 390, 14240, and 14246 of the *California Elections Code*. The Elections Code sections provide, respectively, for an affidavit of registration (Section 310), a form for the affidavit of registration (Section 321), grounds for cancelation of registration (Section 383), cancelation of registration upon criminal conviction (Section 389), a record of criminal conviction to be kept by the county clerk and furnished to the registrar of voters (Section 390), grounds for oral challenge of an elector (Section 14240), and procedure for challenge on the ground of felony conviction or conviction of misappropriation of public money (Section 14246). These sections implement Article II, Section 3, and Article XX, Section 11, of the California Constitution which were also found to violate the Equal Protection Clause of the Fourteenth Amendment.

California, however, is one of the many states and territories that also provide judicial or administrative procedures whereby an ex-felon can seek to have his right to the franchise reinstated.[4]

California Elections Code, Section 350, was the procedure followed for the judicial determination in the case of *Otsuka v. Hite, supra,* 64 C.2d 596, 414 P.2d 412, 51 Cal.Rptr. 284 (1966). That section provides:

> "If the county clerk refuses to register any qualified elector in the county, the elector may proceed by action in the superior court to compel his registration. In an action under this section, as many persons may join as plaintiffs as have causes of action."

Otsuka provided that not every felony conviction results in disenfranchisement. (See discussion, *supra.*) The county clerk or registrar of voters, with the aid of legal counsel, if desired, should determine whether the crime in question is infamous. Any determination adverse to the prospective voter may then be contested in the Superior Court. The total spectrum of the *judicial* process would become available.

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[4]Forty-three states and the territories of the District of Columbia, Guam, Virgin Islands, Puerto Rico, and the Trust Territory of the Pacific Islands, by statute or constitutional provision, disenfranchise persons convicted of a "felony," "infamous" or specified crimes. Only the states of Alabama, Alaska, New Hampshire, New York, and Oklahoma do not have an automatic, judicial, or administrative procedure which reinstates the franchise. (See Appendix B hereto for the constitutional and statutory disenfranchisement provisions of the several states and territories.)

Additionally, California provides that an ex-felon may, by a *judicial-administrative* process, seek restoration of the franchise. This procedure is set forth in the California Penal Code at Sections 4852.01-4852.21. (See Sections 4852.01, 4852.02, 4852.03, 4852.05, 4852.06, 4852.07, 4852.08, 4852.13, 4852.16, 4852.17 set forth in Appendix A hereto.

The prospective voter files a notice of intention to petition for a certificate of rehabilitation with the county clerk (Section 4852.01), he then waits a specified period of time (Sections 4852.02, 4852.03), obeys all laws (Section 4852.05), and, at the conclusion of that specified time, files a petition for rehabilitation in the Superior Court (Section 4852.06). After proper notice (Section 4852.07), a judicial proceeding is held wherein the petitioner may be represented by appointed or selected counsel (Section 4852.08). If the Court finds that the prospective voter has "demonstrated by his course of conduct his rehabilitation and his fitness to exercise all of the civil and political rights of citizenship, the Court shall make an order declaring that the petitioner has been rehabilitated and recommending that the governor grant a full pardon to the petitioner." (California Penal Code, Section 4852.13.) The governor may then issue a full pardon (Section 4852.16), which entitles the petitioner to all civil and political rights including "the right to vote." (Section 4852.17.)

The above judicial and judicial-administrative procedures enable an ex-felon to regain the franchise. The disenfranchisement provisions of the California

Constitution and the California Elections Code are thus not the end of the road. The franchise is not forever lost to an ex-felon. Rather, he need only seek registration or pardon. By this statutory scheme, the California legislature has attempted to protect the state from the perils noted in *Green v. Board of Elections, supra,* 380 F.2d 445, and yet insure that all ex-felons have the opportunity to seek reenfranchisement.

> "A state has an interest in preserving the integrity of her electoral process by removing from the process those persons with proven anti-social behavior whose behavior can be said to be destructive of society's aims." (*Kronlund v. Honstein, supra,* 327 F.Supp. at 73.)

California has attempted to preserve the integrity of her electoral process, but in a manner so as not to deny equal protection and due process of law.

When the prospective voter has completed his term of incarceration and parole, and, through compliance with either the Elections or Penal Code scheme, indicates to society that he is no longer "destructive of society's aims," as witnessed by the original commission of the felony, his right to the franchise is restored.

CONCLUSION

For the reasons set forth above, petitioner respectfully submits that the judgment and opinion of the California Supreme Court below should be reversed.

Respectfully submitted,

DUNCAN M. JAMES,
District Attorney of the County of Mendocino,
Counsel for Petitioner.

JONATHAN M. LEHAN,
Deputy District Attorney,
Of Counsel.

Dated, November, 1973.

(Appendices Follow)

Appendix A

CALIFORNIA ELECTIONS CODE

§ 310. Affidavit of registration; contents
Text of section operative until January 1, 1974

The affidavit of registration shall show:

(a) The facts necessary to establish the affiant as an elector.

(b) Affiant's name at length, including his given name, and a middle name or initial, or if the initial of his given name is customarily used, then the initial and middle name. The given name of a woman shall be preceded in all cases by the designation of Miss or Mrs.

(c) Affiant's place of residence and post office address with sufficient particularity to identify it and to determine affiant's voting precinct.

(d) Affiant's social security number. If his social security number is not immediately available, the affiant may mail the number to the county clerk on an addressed post card provided for that purpose. Notwithstanding this section or Section 321, no person shall be denied the right to register because of his failure to furnish his social security number.

(e) Affiant's occupation.

(f) The country or state of affiant's birth.

(g) If foreign born, how citizenship was acquired, whether by:

(1) Citizenship of father.

(2) Treaty or act of Congress.

(3) Order of a court of naturalization.

(4) Marriage to a citizen.

(5) Naturalization of a parent or husband.

The place where the affiant became a citizen shall be stated except in the case of citizenship acquired by citizenship or naturalization of parents, by treaty, or by act of Congress. When citizenship depends upon the citizenship or naturalization of a parent or husband, the name of the parent or husband shall be stated.

(h) Whether the elector is able to read the Constitution in the English language and to write his name, and whether the elector has any physical disability by reason of which he cannot mark the ballot, in which case the nature of such disability shall be stated.

(i) Whether the affiant has been convicted of a felony which disqualifies him from voting. (Not all felony convictions disqualify him from voting.)

The affiant shall sign the affidavit with his name at length, including given name, middle name or initial and middle name, and if he is unable to write he shall sign with a mark or cross, and the person before whom the affiant is made shall insert the date of the affidavit, which shall be the date of the jurat. (Amended by Stats.1932, c. 108, p. 788, § 1; Stats.1963, c. 729, p. 1742, § 1; Stats.1969, c. 402, p. 933, § 1; Stats. 1969, c. 1543, p. 3136, § 1; Stats.1970, c. 148, p. 392, § 1, urgency, eff. May 29, 1970.)

§ 310. Affidavit of registration; contents

Text of section operative January 1, 1974

The affidavit of registration shall show:

(a) The facts necessary to establish the affiant as an elector.

(b) Affiant's name at length, including his given name, and a middle name or initial, or if the initial of his given name is customarily used, then the initial and middle name. The given name of a woman shall be preceded in all cases by the designation of Miss or Mrs.

(c) Affiant's place of residence; residence telephone number, if furnished; and post office address with sufficient particularity to identify it and to determine affiant's voting precinct. Notwithstanding this section or Section 321, no person shall be denied the right to register because of his failure to furnish his telephone number, and shall be so advised by the registration clerk or deputy registrar.

(d) Affiant's social security number. If his social security number is not immediately available, the affiant may mail the number to the county clerk on an addressed post card provided for that purpose. Notwithstanding this section or Section 321, no person shall be denied the right to register because of his failure to furnish his social security number, and shall be so advised by the registration clerk or deputy registrar.

(e) Affiant's occupation.

(f) The country or state of affiant's birth.

(g) If foreign born, how citizenship was acquired, whether by:

(1) Citizenship of father.

(2) Treaty or act of Congress.

(3) Order of a court of naturalization.

(4) Marriage to a citizen.

(5) Naturalization of a parent or husband.

The place where the affiant became a citizen shall be stated except in the case of citizenship acquired by citizenship or naturalization of parents, by treaty, or by act of Congress. When citizenship depends upon the citizenship or naturalization of a parent or husband, the name of the parent or husband shall be stated.

(h) Whether the elector is able to read the Constitution in the English language and to write his name, and whether the elector has any physical disability by reason of which he cannot mark the ballot, in which case the nature of such disability shall be stated.

(i) Whether the affiant has been convicted of a felony which disqualifies him from voting. (Not all felony convictions disqualify him from voting.)

The affiant shall sign the affidavit with his name at length, including given name, middle name or initial, or initial and middle name, and if he is unable to write he shall sign with a mark or cross, and the person before whom the affidavit is made shall insert the date of the affidavit, which shall be the date of the jurat. (Amended by Stats.1963, c. 108, p. 788, § 1;

Stats.1963, c. 729, p. 1742, § 1; Stats.1969, c. 402, p. 933, § 1; Stats.1969, c. 1543, p. 3136, § 1; Stats.1970, c. 148, p. 392, § 1, urgency, eff. May 29, 1970; Stats.1972, c. 1053, p. ——, § 3, operative Jan. 1, 1974.)

§ 321. Form of affidavit

Text of section operative January 1, 1974

Subject to the provisions of this chapter, the body of the affidavit of registration shall be substantially in the following form:

For transfer or change or name	I am registered under the name of _____ in _____ Assembly District, _____ Precinct in said county and request that said registration be canceled.

AFFIDAVIT OF REGISTRATION

State of California, }
County of (_____) } ss.

The undersigned affiant, being duly sworn, says: I will be at least 21 years of age at the time of the next succeeding election, a citizen of the United States, and a resident of the state one year, of the county 90 days, and of the precinct 54 days next preceding such election, and will be an elector of this county at the next succeeding election.

1. I am not now registered as a voter in this state. (If now registered in this county under this or another name, mark out word "not" and fill out transfer clause at top. If now registered in another county, mark out word "not" and execute a separate affidavit of cancellation before registering.)

2. My full name is ..... (including Christian or given name, and middle name or initial and in case of women, the prefix Miss or Mrs.).

3. My residence is ....., between ..... and ..... Streets, ...floor, Room ....., and my residence telephone number is ..... (If telephone number is not given, write or stamp "None" or "Declines to state" as appropriate.)

4. My occupation is .....

5. My height is ..... feet ..... inches.

6. I was born in .....
(State or country)

7. I acquired citizenship by (underline method of acquiring citizenship):

a. Decree of court.

b. Father's naturalization. / Mother's naturalization.

c. Citizenship of father.

d. Marriage to a citizen.

e. Naturalization of my husband.

f. Act of Congress.

g. Treaty.

Where (city / state) .....

My (father's / husband / mother's) name is (was) .....

(To be filled out when citizenship depends on citizenship or naturalization of parent or husband.)

8. I can ..... read the Constitution in the English language; I can ..... write my name; I am entitled to vote by reason of having been on October 10, 1911, an elector.

I can ..... mark my ballot by reason of ..... (State physical disability, if any.)

9. I intend to affiliate at the ensuing primary election with the ..... Party. (If affiliation is not given, write or stamp "Declines to state.")

10. I have not been convicted of a felony which disqualifies me from voting. (Not all felony convictions will disqualify you from voting.)

11. My social security number is ..... (may be omitted).

.....

(Affiant sign here.)

Residence .....

Subscribed and sworn to before me this ..... day of ....., 19....

.....

County Clerk.

By.....

Deputy County Clerk.

Assembly District .....

Post office address is ..... Precinct .....

Rural Route No. ..... Box No. .....

(Amended by Stats.1963, c. 108, p. 789, § 2; Stats. 1963, c. 729, p. 1743, § 2; Stats.1969, c. 402, p. 934,

§ 2; Stats.1969, c. 1543, p. 3137, § 2; Stats.1970, c. 148, p. 393, § 2, urgency, eff. May 29, 1970; Stats.1971, c. 1760, p. 3804, § 1, urgency, eff. Dec. 16, 1971; Stats. 1972, c. 1053, p. ....., § 4, operative Jan. 1, 1974.)

§ 350. Court action; joinder of plaintiffs

If the county clerk refuses to register any qualified elector in the county, the elector may proceed by action in the superior court to compel his registration. In an action under this section, as many persons may join as plaintiffs as have causes of action. (Stats. 1961, c. 23, p. ....., § 350.)

§ 383. Grounds for cancellation

The county clerk shall cancel the registration in the following cases:

(a) At the request of the person registered.

(b) When the insanity of the person registered is legally established.

(c) Upon the production of a certified copy of a subsisting judgment of the conviction of the person registered of any infamous crime or of the embezzlement or misappropriation of any public money.

(d) Upon the production of a certified copy of a judgment directing the cancellation to be made.

(e) Upon the death of the person registered.

(f) If the person registered has not voted at the preceding general election unless the clerk, prior to the time he has canceled the registration, has had written notice from the voter that the voter still

resides and has not removed from the residence address stated in the affidavit of registration, in which case he shall not cancel the registration, but it shall remain permanent unless canceled for any other cause enumerated in this section. If the county clerk has already canceled the affidavit of registration, then upon receipt of the proper information within 60 days after mailing the notice provided for in Section 387, he shall restore the affidavit of registration to the files. * * *

(Amended by Stats.1965, c. 26, p. 903, § 1; Stats. 1965, c. 451, p. 1762, § 2; Stats.1969, c. 810, p. 1633, § 2.)

§ 389. Criminal conviction; cancellation of registration

The county clerk shall, in the first week of September in each year, examine the records of the courts having jurisdiction in case of infamous crimes and the embezzlement or misappropriation of public money, and shall cancel the affidavits of registration of all voters who have been finally convicted of an infamous crime or of the embezzlement or misappropriation of public money.

As used in this section, "county clerk" does not include "registrar of voters." (Stats.1961, c. 23, p. —, § 389.)

§ 390. Record of criminal conviction

The county clerk, on the basis of the records of courts in the county having jurisdiction of such of-

fenses, shall furnish to the registrar of voters in a county where there is a registrar of voters, before the first day of September of each year, a statement showing the names of all persons convicted of infamous crimes or of the embezzlement or misappropriation of public money during the year prior to that first day of September, whose convictions have become final. The registrar of voters shall, during the first week of September in each year, cancel the affidavits of registration of such persons. The county clerk shall certify the statement under the seal of his office.

As used in this section "county clerk" does not include "registrar of voters." (Stats.1961, c. 23, p. —, § 390.)

§ 14240. Grounds for oral challenge; posting eligibity information

A person offering to vote may be orally challenged within the polling place only by a member of the precinct board upon any or all of the following grounds:

(a) That he is not the person whose name appears on the register.

(b) That he has not been a resident of the state one year next preceding the election.

(c) That he * * * is not a citizen of the United States * * *.

(d) That he has not been a resident of the county for 90 days preceding the election.

Asterisks * * * indicate deletions by amendment

Underline indicates changes or additions by amendment

(e) That he has not been a resident of the precinct for 54 days next preceding the election.

(f) That he has voted that day.

(g) That he has been convicted of a felony.

(h) That he has been convicted of the embezzlement or misappropriation of public money.

On the day of the election no person, other than a member of a precinct board or other official responsible for the conduct of the election, shall challenge any voter or question him concerning his qualifications to vote.

If any member of a precinct board receives, by mail or otherwise, any document or list concerning the residence or other voting qualifications of any person or persons, with the express or implied suggestion, request, or remand that such person or persons be challenged, he shall first determine whether the document or list contains or is accompanied by evidence constituting probable cause to justify or substantiate a challenge. In any case, before making any use whatever of such a list or document, the member of the precinct board shall immediately contact the clerk, charged with the duty of conducting the election, and describe to him the contents of such document or list and such evidence, if any, received bearing on voting qualifications. The clerk shall advise the members of the precinct board as to the sufficiency of probable cause for instituting and substantiating the challenge and as to the law as herein provided, relating to hearings and procedures for challenges by members of the precinct board and determination thereof by a precinct board.

The clerk may, if necessary, designate a deputy to receive and answer inquiries from precinct board members as herein provided.

No person shall post or cause to have posted any poster, bill, or placard containing any information concerning eligibility to vote to be displayed on the day of the election within 500 feet of the entrance to a polling place.

(Amended by Stats.1963, c. 1560, p. 3143, § 1; Stats. 1965, c. 1908, p. 4417, § 1; Stats.1967, c. 208, p. 1334, § 1; Stats.1971, c. 1760, p. 3807, § 2, urgency, eff. Dec. 16, 1971.)

§ 14246. Oath of criminal conviction

If the challenge is on the ground that the person challenged has been convicted of * * * a felony or that he has been convicted of the embezzlement or misappropriation of public money, he shall not be questioned, but the fact may be proved by the production of an authenticated copy of the record or by the sworn testimony of two witnesses. (As amended Stats. 1965, c. 1908, p. 4419, § 4.)

CALIFORNIA GOVERNMENT CODE

§ 275. Electors, eligibility to office

Unless otherwise specifically provided, every elector is eligible to the office for which he is an elector, and no person is eligible who is not such an elector. (Stats.1943, c. 134, p. 902, § 275.)

§1203.4 Discharged probationer; change of plea or vacation of verdict; dismissal of charge; release from penalties and disabilities; application; pleading prior conviction in prosecution for subsequent offenses

(a) * * * In any case in which a defendant * * * has fulfilled the conditions of * * * probation for the entire period * * * of probation, or has been discharged * * * prior to the termination of the period * * * of probation, or in any other case in which a court, in its discretion and the interest of justice, determines that a defendant should be granted the relief available under this section, the defendant shall, at any time * * * after the termination of the period of probation, if he is not then serving a sentence for any offense, on probation for any offense, or charged with the commission of any offense, be permitted by the court to withdraw his plea of guilty or plea of nolo contendere and enter a plea of not guilty; or, if he has been convicted after a plea of not guilty, the court shall set aside the verdict of guilty; and, in either case, the court shall thereupon dismiss the accusations or information against the defendant and he shall thereafter be relased from all penalties and disabilities resulting from the offense of which he has been convicted. The probationer shall be informed of this right and privilege in his probation papers. The probationer may make such application and change of plea in person or by attorney, or by the probation officer authorized in writing; provided, that, in any subsequent prosecution of the defendant for

any other offense, the prior conviction may be pleaded and proved and shall have the same effect as if probation had not been granted or the accusation or information dismissed.

Dismissal of an accusation or information pursuant to this section does not permit a person to own, possess, or have in his custody or control any firearm capable of being concealed upon the person or prevent his conviction under Section 12021.

This subdivision shall apply to all applications for relief under this section which are filed on or after * * * November 23, 1970.

(b) Subdivision (a) of this section does not apply to any misdemeanor which is within the provisions of subdivision (b) of Section 42001 of the Vehicle Code, or to any infraction.

(Amended by Stats.1970, c. 539, p. 1035, § 1; Stats 1971, c. 333, p. 667, § 1.)

§ 4852.01 Notice of intention to apply for certificate of rehabilitation and pardon; application of Chapter

(a) Any person convicted of a felony who has been released from a state prison or other state penal institution or agency in California, whether discharged on completion of the term for which he was sentenced or released on parole prior to May 13, 1943, who has not been incarcerated in a state prison or other state penal institution or agency since his release and who presents satisfactory evidence of a three-year residence in this State immediately prior

to the filing of the petition for a certificate of rehabilitation and pardon provided for by this chapter, may at any time file with the clerk of the county in which he resides a notice of intention to petition for such certificate and pardon, and may at any time after his discharge from custody and termination of his parole file such petition.

(b) Any person convicted of a felony who, on May 13, 1943, was confined in a state prison or other institution or agency to which he was committed and any person convicted of a felony after that date who is committed to a state prison or other institution or agency may file with the clerk of the county in which he resides, at any time after his discharge from custody or release on parole, a notice of intention to apply for a certificate of rehabilitation and pardon in accordance with the provisions of this chapter.

(c) This chapter shall not apply to persons convicted of misdemeanors; to persons who have served time in county jails only; to persons serving a mandatory life parole; to persons committed under death sentences; or to persons in the military service.

(Added by Stats.1943, c. 400, p. 1922, § 1, eff. May 13, 1943. Amended by Stats.1955, c. 708, p. 1197, § 1.)

§ 4852.02 Procedure after filing notice of intention; change of residence; second notice

(a) Requirements

(a) A person who files a notice of intention pursuant to Section 4852.01 of this code shall within 10 days thereafter:

(1) Service of notice

* * * (1) Serve upon the chief of police of the city in which he resides, or upon the sheriff of the county if he resides in unincorporated territory, a certified copy of the notice of intention filed with the county clerk.

(2) Photograph, fingerprints, information

* * * (2) Give to the peace officer his photograph and fingerprints, full information concerning his residence and occupation, and any other information concerning his conduct and manner of living which the peace officer may require.

(3) Agreement to supervision

* * * (3) Agree to submit to the supervision of the peace officer and conform to any reasonable requirements by the peace officer during the period of rehabilitation.

(b) Commencement of rehabilitation period

(b) If any of the requirements of paragraphs (1) to (3) inclusive, of subdivision (a) are not performed until after the 10-day period specified by this section, the period of rehabilitation shall commence when there is compliance with paragraph (1) of subdivision (a). This subdivision shall apply to notices of intention filed before or after the effective date of the amendment of this section enacted at the 1970 Regular Session of the Legislature.

Asterisks * * * indicate deletions by amendment

Underline indicates changes or additions by amendment

(c) Change of residence; second notice

(c) However, if after the filing and serving of the notice the person filing it changes his residence to another county he shall file with the county clerk of such other county a notice of intention similar in form and substance to that previously filed, which second notice shall state the date and place where the previous notice was filed and the name and title of the peace officer upon whom the same was served. A certified copy of such second notice shall be served upon the chief of police of the city into which he has moved, or upon the sheriff of the county if the changed residence is in unincorporated territory, and the person filing the notice shall give to such peace officer the information described in this section.

(d) Transmittal

(d) Upon the filing of such second notice the county clerk shall transmit notice of that fact to the county clerk with whom the previous notice was filed and said last-mentioned county clerk shall transmit the said previous notice to the county clerk with whom the second notice was filed.

(e) Order to furnish data

(e) Upon request of the county clerk with whom the second notice is filed, the district attorney shall move and the superior court shall order that the county clerk with whom the original notice was filed furnish such material and data in his possession relevant to

the case to the county clerk with whom the second notice was filed.
(Amended by Stats.1970, c. 1150, p. 2034, § 1.)

§ 4852.03 Period of rehabilitation; determination of period

The period of rehabilitation shall not begin * * * to run until there has been compliance with paragraph (1) of subdivision (a) of Section 4852.02. For * * * purposes of this chapter, * * * the period of rehabilitation shall constitute three years' residence in the county or counties in which such notice or notices are filed, plus a period of time determined by the following rules:

(1) To the three years there shall be added 30 days for each year of the term prescribed by statute as the maximum penalty of imprisonment for the crime of which the petitioner was convicted. When the maximum term includes the fractional part of a year, the period of rehabilitation shall be extended by a proportional part of the 30-day period.

(2) For the purposes of this chapter, crimes with maximum penalties of life improisonment shall be regarded as carrying a maximum penalty of imprisonment for 50 years.

(3) Where the petitioner is convicted of multiple crimes, the maximum penalty for the purpose of computing the period of rehabilitation shall be determined as follows: (a) if the sentences are made to run concurrently, the greatest maximum penalty prescribed

by statute for any of such crimes shall constitute the maximum penalty; (b) if the sentences are made to run consecutively, the sum of the maximum penalties prescribed by statute for all such crimes shall constitute the maximum penalty, but in no case shall the maximum penalty exceed the period prescribed for life imprisonment under subparagraph (2) of this section. The trial court hearing the application for the certificate of rehabilitation may, if the defendant was ordered to serve consecutive sentences, order that his statutory period of rehabilitation be extended for an additional period of time which when combined with the time already served will not exceed the period prescribed by statute for the sum of the maximum penalties for all such crimes.

(4) Any person who was discharged after completion of his term or was released on parole before May 13, 1943, is not subject to the periods of rehabilitation set forth in these rules.

Unless and until the period of rehabilitation, as stipulated herein, has passed, the petitioner shall be ineligible to file his petition for a certificate of rehabilitation with the court. Any certificate of rehabilitation which is issued and under which the petitioner has not fulfilled the requirements of this chapter shall be void.

A change of residence does not interrupt the period of rehabilitation prescribed by this section if the second notice of intention required by Section 4852.02 of this code is filed.

(Amended by Stats.1970, c. 1150, p. 2035, § 2)

§ 4852.05 Conduct during rehabilitation period

During the period of rehabilitation the person shall live an honest and upright life, shall conduct himself with sobriety and industry, shall exhibit a good moral character, and shall conform to and obey the laws of the land.

(Added by Stats.1943, c. 400, p. 1923, § 1, eff. May 13, 1943.)

§ 4852.06 Petition for ascertainment and declaration of rehabilitation and for certificate; time for filing; prerequisites

Except as provided in subdivision (a) of Section 4852.01, after the expiration of the minimum period of rehabilitation applicable to him (and, in the case of persons released upon parole, after the termination of parole), each person who has filed a notice of intention pursuant to Section 4852.01 and has complied with the requirements of Sections 4852.02 and 4852.05 may file in the superior court of the county in which he then resides a petition for ascertainment and declaration of the fact of his rehabilitation and of matters incident thereto, and for a certificate of rehabilitation under this chapter. No such petition shall be filed until and unless the petitioner has continuously resided in this State, after leaving prison, for a period of not less than three years immediately preceding the date of filing the petition and until and unless the same period has elapsed since the service of the original notice as required by Section 4852.02 upon the appro-

priate peace officer in the county in which the petition is filed.

(Added by Stats.1943, c. 400, p. 1923, § 1, eff. May 13, 1943. Amended by Stats.1945, c. 1072, p. 2069, § 1; Stats.1955, c. 708, p. 1199, § 4.)

§ 4852.07 Petition; notice of filing; officials to whom given; notice of time of hearing; time for service

The petitioner shall give notice of the filing of the petition to the district attorney of the county in which the petition is filed, to the chief of police and sheriff upon whom a certified copy of the notice of intention was last served, to the district attorney of each county in which the petitioner was convicted of a felony, and to the office of the Governor, together with notice of the time of the hearing of the petition, at least 30 days prior to the date set for such hearing.

(Added by Stats.1943, c. 400, p. 1923, § 1, eff. May 13, 1943.)

§ 4852.08 Counsel; private; public defender; adult probation officer; assigned counsel

During the proceedings upon the petition, the petitioner may be represented by counsel of his own selection; if he has no such counsel he shall be represented by the public defender, if there is one in the county, and if there is none, by the adult probation officer of the county or if in the opinion of the Court the petitioner needs counsel, the Court shall assign counsel to represent him.

(Added by Stats.1943, c. 400, p. 1924, § 1, eff. May 13, 1943.)

§ 4852.13 Certificate of rehabilitation; finding; contents; filing

If, after hearing, the Court finds that the petitioner has demonstrated by his course of conduct his rehabilitation and his fitness to exercise all of the civil and political rights of citizenship, the Court shall make an order declaring that the petitioner has been rehabilitated, and recommending that the Governor grant a full pardon to the petitioner. Such order shall be filed with the clerk of the Court, and shall be known as a certificate of rehabilitation. The certificate shall show the date on which the original notice of intention to apply for a certificate was filed.

(Added by Stats.1943, c. 400, p. 1925, § 1, eff. May 13, 1943. Amended by Stats.1955, c. 708, p. 1199, § 5.)

§ 4852.16 Pardon; certificate as application; issuance; recommendation

The certified copy of a certificate of rehabilitation transmitted to the Governor shall constitute an application for a full pardon upon receipt of which the Governor may, without any further investigation, issue a pardon to the person named therein, except that, pursuant to Section 1 of Article VII of the Constitution, the Governor shall not grant a pardon to any person twice convicted of felony, except upon the written recommendation of a majority of the judges of the Supreme Court.

(Added by Stats.1943, c. 400, p. 1925, § 1, eff. May 13, 1943.)

§ 4852.17 Report of certificate of rehabilitation or pardon; rights restored by pardon; exceptions

Whenever a person is issued a certificate of rehabilitation or granted a pardon from the Governor under this chapter, the fact shall be immediately reported to the * * * Department of Justice by the court, Governor, officer, or governmental agency by whose official action the certificate is issued or the pardon granted. The * * * Department of Justice shall immediately record the facts so reported on the former criminal record of the person, and transmit such facts to the Federal Bureau of Investigation at Washington, D.C. When the criminal record is thereafter reported by said * * * department, it shall also report the fact that the person has received a certificate of rehabilitation, or pardon, or both.

Whenever a person is granted a full and unconditional pardon by the Governor, based upon a certificate of rehabilitation, the pardon shall entitle the person to exercise thereafter all civil and political rights of citizenship, including but not limited to: (1) the right to vote; (2) the right to own, possess, and keep any type of firearm that may lawfully be owned and possessed by other citizens; except that this right shall not be restored, and Sections 12001 and 12021 of the Penal Code shall apply, if the person was ever convicted of a felony involving the use of a dangerous weapon.

(Amended by Stats.1972, c. 1377, p. ....., § 75.)

Asterisks * * * indicate deletions by amendment

Underline indicates changes or additions by amendment

Appendix B

Disenfranchisement for Felonies	Disenfranchisement for Infamous Crimes	Disenfranchisement for Specified Crimes	No Disenfranchisement
Ala. Const. Art. VIII, § 182[5]; Code Ala. Tit. 17 § 15	Ark. Const. Art. V, §§ 12 & 13; Tit. 3 Elect. 3-101	Alas. Const. Art. V, §§ 1 & 2[3]; AS 15.05.030	Ind. Const. Art. 2, § 8
Ariz. Const. Art. VII, § 2; A.R.S. 16-101	Cal. Const. Art. II, § 1 (11-7-72 amend. Art. II, § 3); Elec.Code § 310 *et seq.*	Colo. Const. Art. VII, § 7[3]; C.R.S. 3 39-3-1	Maine
			Massachus
Conn. Const. Art. VI, § 3; C.G.S.A. 9-46	Iowa Const. Art. II, §5; I.C.A. Tit. 4 § 48.31(5)	Ga. Const. Art. II, § 2, ch. 2-8, § 2-801; Ga. Code Ann. 34-621	Mich. Con Art. III, §
Del. Const. Art. V, §2[4]; 15 Del. C. 1701	Md. Const. Art. I, § 2; ART 33, 3-4(b)(5)	Miss. Const. Art. XII, § 241; 23-5-35	Pennsylva
Fla. Const. Art. VI, § 4[4]; FSA 97.041	N.Y. Const. Art. III, § 3[5]	N.H. Const. Pt. I, Art. 11[5]	Tenn. Con Art. IV, §
Hawaii Const. Art. II, § 2[3]; HRS Crim. § 716-2	Ohio Const. Art. V, § 4; 2961.01	Utah Const. Art. IV, § 6	Vermont
Idaho Const. Art. VI, § 2; I.C.A. 34-403	R.I. Const. Art. XXIV 17-1-2		
Ill. Const. Art. III, § 2[4]; S.H.A. ch. 46, 3-4	Wash. Const. Art. VI, § 3[4]; RCWA 29.07.070(14)		
Kan. Const. Art. V, § 2[3]; K.S.A. 22-3722	Wyo. Const. Art. VI, § 6; 22.1-2(k)		
Ky. Const. § 145; KRS 128.020			
La. Const. Art. VIII, § 6; LSA-R.S. 18:42			

Disenfranchisement for Felonies	Disenfranchisement for Infamous Crimes	Disenfranchisement for Specified Crimes	No Disenfranchisement
Minn. Const. Art. VII, § 2[4]; M.S.A. 200.02(25)			
Mo. Const. Art. VIII, § 2; V.A.M.S. 111.021			
Mont. Const. Art. IX, § 2[3]; 23-2701			
Neb. Const. Art VI, § 2[4]; R.R.S. 1943 § 32-1040			
Nev. Const. Art. II, § 1; N.R.S. Tit. 24 293.540			
N.J. Const. Art. II, § 7[4]; N.J.S.A. 19:4-8			
N.M. Const. Art. VII, § 1; 3-1-4			
N.C. Const. Art. VI, § 2; 163-55-(3)			
N.D. Const. Art. V, § 127; 16-01-04			
Okla. Const. Art. III, § 1[5]; 26 Okl. St. Ann. 93.1			
Ort. Const. Art. II, § 2[4]; ORS 137.250			
S.C. Const. Art. II, § 7; 23-62			
S.D. Const. Art. VII, § 8[4]; S.D.L.C. 1967, 12-3-1			

Disenfranchisement for Felonies	Disenfranchisement for Infamous Crimes	Disenfranchisement for Specified Crimes	No Disenfranchisement
Tex. Const. Art. VI, § 1; Elec.Code 5.01			
Va. Const. Art. II, § 1; 24-1-41			
W.Va. Const. Art. IV, § 1[4]; 3-1-3			
Wisc. Const. Art. III, § 2; W.S.A. 6.03(1)			

[1]The District of Columbia[4] and the territories of Guam,[3] Virgin Islands, Puerto Rico, and the Trust Territories of the Pacific[4] disenfranchise for felonies.

[2]Permissive language in state constitution allowing for disenfranchisement without implementing statutes.

[3]Disenfranchisement only while in prison. The franchise is automatically restored on release from prison. (Four states.)

[4]Automatic reenfranchisement at the completion of parole, probation, sentence, or other. (Ten states.)

[5]No automatic, judicial, or administrative procedure to restore the franchise. (Five states.)

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